IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1261 OF 2005

Navnath Namdev Mirgane & Ors. ...Appellants
Vs.
Bhagwat Bhanudas Pyghan & Anr. ...Respondents

Mr V.B. Naik with Mr I.M. Khairdi for the Appellants.
Mr S.G. Kudale for the Respondents.

CORAM : A. S. OKA, J.
DATE : MARCH 28, 2006.

P.C.:

1. The submissions of the Advocates appearing for the parties were heard yesterday. In this First Appeal the challenge is to an order made under section 72 of the Bombay Public Trusts Act, 1950. Though the Appeal is filed as First Appeal, in view of the settled position of law, the Appeal will be governed by the constraints imposed by Section 100 of the Code of Civil Procedure, 1908.

2. The learned Assistant Charity Commissioner by Judgment and Order dated 22nd July, 2002 accepted the change report submitted by the Appellants. In an Appeal preferred before the learned Joint Charity Commissioner, the order of the Assistant Charity Commissioner was quashed and set aside. The order of

the Joint Charity Commissioner has been confirmed by the District Court in an Application under section 72 of the Bombay Public Trusts Act, 1950 by passing the impugned order.

3. It is an admitted position that the change report filed by the Appellants was for recording the change which had allegedly taken place on the basis of the alleged election held on 20th August, 2000. It is not in dispute that the term of the committee allegedly elected on 20th August, 2000 was for three years. If this is the position, the First Appeal need not be entertained as the question of legality and validity of election allegedly held on 20th August, 2000 has become academic. It appears that change report filed for recording change on the basis of subsequent election has been already accepted.

4. The learned Counsel appearing for the Appellants submitted that the effect of the impugned order passed by the District Court and by the Joint Charity Commissioner is that membership of some of the Appellants has been nullified. In my view, in an

Appeal arising out of change report proceedings which has become academic by virtue of lapse of time, this contention cannot be considered. If some of the Appellants are claiming any right on the basis of membership allegedly granted to them, it is for them to establish their right in appropriate proceedings.

5. Subject to what is stated above, the First Appeal is dismissed with no orders as to costs.

JUDGE